

REMARKS

Claims 1-4, 10-19, 24-25, 30-43, 45-46, 48-82 and 89-92 are pending in the application. With entry of this Amendment, Claims 1, 10-14, 17, 30-43, 45, 46, 48-82, and 89-92 are pending in the application. Claims 1-47, and 82-92 were previously elected herein for initial prosecution, and claims 48-81 were withdrawn, in response to a current Restriction Requirement.

By this Amendment, claims 1, 10, 11, 17, 32, 81, and 89-92 have been amended, and claims 2-4, 15, 16, 18, 19, 24, and 25 have been cancelled, without prejudice to prosecution of the cancelled subject matter in one or more related application(s), for clarity in accordance with the Examiner's suggestions.

All elected claims, as currently amended, are believed to properly presented for examination.

Entry of the foregoing amendments and reconsideration of the application in view of these amendments and accompanying remarks is respectfully requested.

Patentability Under 35 U.S.C. § 101

Applicant notes that the prior rejection of claims 82-84, 87, 89, 91 and 92 as allegedly unpatentable under 35 U.S.C. § 101 set forth in the previous Office Action (Paper No./Mail Date 20061120) has been withdrawn.

Claim Objections

Applicant notes that the prior objections to claims 10, 15, 17, 32 and 91 for alleged informalities set forth in the previous Office Action (Paper No./Mail Date 20061120) have been withdrawn.

Patentability Under 35 U.S.C. § 112

Claims 1-4, 10-17, 30-43, 45, 46, 82, and 89-92 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement.

Without acceding to the merits of the foregoing rejection, Applicant has amended the claims herein to clearly specify the structure of each of the claimed permeabilizing peptides. These amendments are respectfully submitted to overcome the instant rejection as it pertains to the claimed permeabilizing peptides.

With regard to certain of the previously-claimed biologically active agents, such as an “anti-allergy agent” (*see* Office Action at p. 3), while Applicant respectfully submits that all of the originally claimed active agents in this are fully described and enabled by the disclosure, this asserted ground for rejection is rendered moot the claims amendments herein withdrawing this subject matter (which amendments are presented to advance certain aspects of the invention to issuance, without prejudice to prosecution of the withdrawn subject matter in one or more related application(s)).

In view of the foregoing, the rejection of claims 1-4, 10-17, 30-43, 45, 46, 82, and 89-92 under 35 U.S.C. § 112, first paragraph, is respectfully submitted to be overcome.

Claims 1-4, 10-17, 30-43, 45, 46, 82, and 89-92 are rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite. Applicant has amended the claims to address each of the asserted grounds for rejection, and withdrawal of the rejection is earnestly solicited.

Patentability Under 35 U.S.C. § 102

Applicant notes that the prior rejection of claims 82-84, 87, 89, 91 and 92 under 35 U.S.C. § 102(b) as allegedly anticipated by Liu, et al., *J. Cell Sci.* 113:2363-2374, 2000. Liu, et al., set forth in the previous Office Action (Paper No./Mail Date 20061120), has been withdrawn.

Claims 82 and 89-92 are rejected under 35 USC § 102(b) as allegedly anticipated by Blaszczyk-Thurin (WO 00/27420 A1). This reference is cited for allegedly teaching SEQ ID NO: 119 (GLDLLGDVRIPVVR).

The amendments to the claims herein clearly distinguish the subject matter of the rejected claims (relating to a specific peptide VRIP-SEQ ID NO: 4) over the alleged teaching by Blaszczyk-Thurin. Withdrawal of this rejection is thereby respectfully requested.

Claims 1-4, 12-14, 16, 17, 32-41 and 82 are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Blaschuk (U.S. Patent No. 6,391,855). This reference is cited for allegedly teaching “a JAM peptide comprising JAM CAR sequence SFTIDPKSG (SEQ ID NO: 2) (claim 1) in a pharmaceutical composition with a pharmaceutically acceptable carrier (claim 9) and a drug (claim 10).” Examiner further asserts that:

In looking to the specification, Blaschuk teaches that ‘virtually any drug may be administered in combination with a modulating agent

as described herein' (column 23, lines 51-52) and provides a myriad of drugs that can be used, including taxol, mitomycin C, indomethacin and ibuprofen, as well as generic antifungals, analgesics, vasodilators, narcotic antagonists (e.g., column 23 line 53 to column 24, line 6). The peptide of Blaschuk is an extracellular domain of murine JAM."

The amendments to the claims herein (relating to a specific peptide, SFTIDPKSG-SEQ ID NO: 2), clearly distinguish the subject matter of the rejected claims over the alleged teaching by Blaschuk. Withdrawal of this rejection is thereby respectfully requested.

Patentability Under 35 U.S.C. § 103

Applicant notes that the prior rejection of claims 1-5, 10-13, 17, 30-46, 82-84, 87, 89, 91 and 92 under 35 USC § 103(a) as allegedly obvious over Liu et al. in view of Quay (US 2004/0028613 A1), set forth in the previous Office Action (Paper No./Mail Date 20061120), has been withdrawn.

Claims 1-4, 12-17, 32-43 and 82 are rejected under 35 U.S.C. § 103(a) as allegedly obvious over Blaschuk, *supra*, in view of Platz (U.S. Patent No. 5,345,562).

The deficiencies of Blaschuk as pertaining to the subject matter of the currently-amended claims are discussed above. These deficiencies fail to support construction of Blaschuk, as a primary reference, in combination with Platz, to render the subject matter of claims 1-4, 12-17, 32-43 and 82 obvious as alleged. Accordingly, this rejection is respectfully submitted to be overcome.

Double Patenting

Various provisional double patenting rejections are set forth at pp. 12-15 of the Office Action. Applicant notes the provisionality of these rejections and will take appropriate action to address these rejections upon allowance of claims in one of the subject applications.

At pp. 21-22 of the Office Action, Examiner presents comments relating to presentation of subject matter which allegedly is "not patentably distinct" in various co-pending applications commonly assigned with the present case. Applicant believes that the current amendments to the claims preclude this assessment, and clarification by the Office of the status of respective claims in the cited applications on this basis is earnestly solicited. Applicant reserves the right to

further address this issue by a showing under 35 U.S.C. § 103(c) and/or 37 C.F.R. § 1.78(c), clarifying ownership and/or inventorship among the allegedly conflicting applications.

It is believed that no fee is required for this submission. Should, however, the U.S. Patent and Trademark Office determine that any fee is due or that a refund is owed for this application, the Commissioner is hereby authorized and requested to charge the required fee and/or credit the refund owed to our Deposit Account No. 502769.

Applicant believes all the claims pending now satisfy Examiner's requirements of form, and are also novel and non-obvious in view of the cited prior art. Applicant respectfully requests favorable treatment and allowance of the claims as amended. The Examiner is urged to contact the undersigned attorney if there are any questions prior to allowance of this matter.

Respectfully submitted,
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